



08 AUG 2007

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Corporate Intellectual Property - UW2220  
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In re Application of	:	
BIEMANS et al.	:	
Application No.: 10/525,889	:	DECISION
PCT No.: PCT/EP2003/010085	:	
Int. Filing Date: 28 August 2003	:	
Priority Date: 30 August 2002	:	
Attorney Docket No.: VB60395	:	
For: METHOD FOR REFOLDING	:	
NEISSERIAL NSPA PROTEIN	:	

This decision is in response to applicants' "RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181" filed in the United States Patent and Trademark Office (USPTO) on 27 November 2006. No petition fee is required.

#### **BACKGROUND**

On 28 August 2003, applicants filed international application PCT/EP2003/010085, which designated the United States and claimed a priority date of 30 August 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 11 March 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 February 2005.

On 25 February 2005, applicants filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 14 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required. The Notification set a two-month extendable period for reply.

On 21 July 2006, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DE/EO/909) indicating that the application was abandoned as to the United States of America for failure to reply to the NOTIFICATION OF MISSING REQUIREMENTS mailed 14 July 2005.

On 03 August 2006, applicants filed a “PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181”. The petition was accompanied by, *inter alia*, copies of two declarations of inventors.

On 05 October 2006, a decision was mailed dismissing without prejudice applicants’ petition under 37 CFR 1.181 because a copy of the Auto-Reply facsimile transmission confirmation referred to in the petition did not appear to have been provided. It was also noted that page 3 of the second declaration of inventors was missing and that there was a difference in names in one of the named inventors between the published international application (Jan Tommassen) and the declaration of inventors (Johannes Petrus Maria Tommassen). The decision indicated that because this difference in names is more than a mere typographical error or a phonetic misspelling of applicant’s legal name, a proper petition under 37 CFR 1.182 was required in order to resolve the matter.

On 27 November 2006, applicants filed the instant “RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181”. The petition was accompanied by, *inter alia*, a copy of an Auto-Reply facsimile transmission confirmation, copies of two declarations of inventors, and a petition under 37 CFR 1.182.

## **DISCUSSION**

### **Petition Under 37 CFR 1.181**

Applicants have provided sufficient evidence to establish that on 03 October 2005 applicants filed two declarations of the inventors. The proof is in the form of the copy of the “Auto-Reply Facsimile Transmission” which bears a date of 03 October 2005 and which itemizes an “Response to Notification of Missing Requirements” and identifies the above-captioned application number and docket number. Further, practitioner states that the copy of the declarations filed 27 November 2006 are copies of the declarations originally filed 03 October 2005. Therefore, in view of the “Auto-Reply Facsimile Transmission” and practitioner’s statement, the declarations received on 27 November 2006 may properly be accepted as originally received in the USPTO on 03 October 2005. The NOTIFICATION OF ABANDONMENT mailed 14 July 2005 is hereby vacated.

### **Petition Under 37 CFR 1.182**

The petition fee has been paid. The statement of Johannes Petrus Maria Tommassen filed 27 November 2006 is accepted.

### **Declaration of Inventors**

The declaration of inventors filed 03 October 2005 is not in compliance with 37 CFR 1.497(a)-(b). The declaration signed by Karine Goraj contains an alteration. The alteration appears to be initialed. However, the alteration appears to change the first name of this inventor. It is unclear exactly what the alteration changes the name to since the alteration is illegible.

Nevertheless, there is now a difference in names in the first name of this inventor between the published international application (Karine) and the declaration of inventors (illegible). If the difference is a mere typographical error or a phonetic misspelling of applicant's legal name, an explanation is required. If the differences is more than this, a proper petition under 37 CFR 1.182 is required in order to resolve the matter. Such a petition must be accompanied by the requisite petition fee of \$400 as well as a statement from the inventor. This statement should set forth that he is a joint inventor of the subject matter of the present application and should set forth the circumstances surrounding the difference in names on the international application and the declaration.

### **CONCLUSION**

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.

For the reasons set forth above, the petition under 37 CFR 1.182 is GRANTED.

For the reasons set forth above, the NOTIFICATION OF ABANDONMENT mailed 14 July 2005 is VACATED.

A proper response must be filed within a time limit of ONE MONTH from the date of this decision. A proper response must include (1) a new declaration signed by Miss Goraj with a legible first name and (2) an explanation if the difference in names is a mere typographical error or a phonetic misspelling of applicant's legal name or a proper petition under 37 CFR 1.182 if the difference is more than that.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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